IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 444 OF 2005

Shri Shankar Mallikarjun Koshti ... Appellant
(Ori.Defendant No.1)

V/s

Shri Madhukar Mallikarjun Koshti & ors. ... Respondents
(Ori.Plaintiff No.1 & Nos. 2 to 4 Ori.Def.Nos. 2 to 4.)

Mr. R.V. Bansode for the appellant.

None for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 7TH JUNE, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Ad-hoc Addl. District Judge, Pandharpur, in R.C.A. No. 340 of 2001 dated 29.11.2004 allowing the appeal to the extent of quantum of share and confirming the remaining order passed by the Jt. Civil Judge, Jr. Divn., Pandharpur decreeing the suit holding that the plaintiff and other parties had their shares in the suit property and were entitled to possession thereof.

2. The plaintiff filed the suit for partition of the suit property located at village Tavashi in Taluka Pandharpur. Plaintiff and defendant No.1 are the real brothers and defendants 2 to 4 are their sisters. It is also an admitted position that Mallikarjun was the father of plaintiff and defendant No.1 and the suit property was the joint family property of the plaintiff and defendants. It is not in dispute that, in view of the order of the Tahsildar in respect of the suit property, it was divided into two part as Gat Nos. 560/2/A and 560/2/B and accordingly the Mutation Entry No. 986 came to be recorded.

The plaintiff filed the suit alleging that defendant No.1 played fraud by obtaining his signatures on blank paper and divided the suit land by making an application. However, that plea was held to be not proved. However, it was held that the partition which was effected by application before the Tahsildar was void ab initio and was not held to be legal partition and, as such, the suit came to be decreed accordingly.

3. The appeal was preferred in the Court of Addl. District Judge, who, after hearing both parties,

accepted the findings recorded by the learned Trial Judge but modified the holdings of the shares of the respective parties and decreed the suit. Hence the present appeal is filed.

4. At the outset, it may be noted that there is no substantial question of law involved in this appeal. The so called question of law sought to be raised on behalf of the appellant is to the effect that, once the partitions were effected by Tahsildar on the application made by the parties, then the Civil Court had no jurisdiction to disturb the partitions holding it void ab initio. However, the evidence on record, which was taken into consideration by both the Courts below, showed that defendants No. 2 to 4 never appeared before the Tahsildar at the time when the application for partition was made and so called mutation entries were effected. In fact, the defendant No.1 never came with the case that statements of defendant Nos. 2 to 4 were recorded before the Tahsildar or they remained present before the Tahsildar for the said purpose. On such and other grounds both the Courts below have found to have appreciated the evidence properly and correctly and have held that the Civil Court had no jurisdiction to interfere in the so called partitions effected by the

Tahsildar.

5. In the result, the appeal has no merit and stands dismissed. Consequently, the Civil Application No. 764 of 2005 also stands dismissed.

(P. V. Kakade, J.)